

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Sprint PCS and AT&T Petitions For)
Declaratory Ruling On CMRS Access)
Charge Issues)

WT Docket No. 01-316

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COMMENTS

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Oklahoma Rural Telephone Companies (to be referred to as the "Oklahoma Companies")¹ submits these Comments in response to the *Public Notice*, DA 01-2618, released by the Commission on November 8, 2001. By the *Public Notice*, the Commission is seeking comments regarding the access charge relationship between a Commercial Mobile Radio Service ("CMRS") licensee and an interexchange carrier ("IXC") toll service provider when that IXC terminates an interexchange toll call on the network of a CMRS licensee. Specifically, Sprint PCS asks the Commission to confirm that the framework of access should apply to such calls. The issues are set forth in separate and conflicting petitions before the Commission filed by Sprint PCS² and AT&T.³

The Oklahoma Companies' interest in this proceeding is in securing a rational and predictable framework for intercarrier relationships. The issues presented by the Sprint PCS and AT&T petitions require attention by the Commission. Matters related to these issues have led to

¹ The Oklahoma Rural Telephone Companies are 30 small and rural local exchange carriers ("LECs") providing telecommunications services in Oklahoma.

² Sprint PCS Petition for Declaratory Ruling, In the Matter of Petition for Declaratory Ruling on Issues Contained in the Access Charge Litigation, Sprint PCS v. AT&T, filed October 22, 2001 with the Commission ("Sprint PCS Petition").

³ AT&T Petition for Declaratory Ruling, In the Matter of AT&T Corp., Petitioner, v. Sprint Spectrum, d/b/a Sprint PCS, Respondent, filed October 22, 2001 with the Commission ("AT&T Petition").

unnecessary confusion among LECs, IXCs, and CMRS licensees in Oklahoma and other states regarding the framework that applies between and among carriers. The Commission should remove the unnecessary confusion immediately by issuing a declaratory ruling that the access framework should apply when an IXC terminates a call on a CMRS licensee's network.

I. THE LONGSTANDING FRAMEWORK FOR INTRASTATE AND INTERSTATE EXCHANGE ACCESS IS WELL ESTABLISHED AND SHOULD BE APPLIED.

The framework for "exchange access" was established in the early 1980s following the replacement of the former Bell system division of revenue contracts among carriers. This access framework, with almost no exception, has applied to both intrastate and interstate interexchange toll calls since that time. The access framework entails multiple relationships among carriers and end users: (1) an end user originates either an intrastate or interstate interexchange toll call; (2) the LEC directs the call to the IXC of the end user's choice pursuant to equal access and toll dialing parity rules;⁴ (3) the LEC provides originating access service to the IXC providing the interexchange toll service;⁵ (4) the LEC "hands-off" the call to the IXC over the access facilities that the IXC has obtained from the LEC; (5) the IXC pays the LEC for the originating access service; (6) the IXC is the provider of the interexchange toll service to the end user;⁶ (7) the IXC

⁴ See 47 C.F.R. §§ 51.209 and 51.211.

⁵ In instances where a LEC also acts as an IXC in the provision of interexchange toll services, it does so separately from its LEC service offerings and in accordance with the Commission's equal access and toll dialing parity rules. Bell Companies act as both LECs and IXCs. Bell Companies are often intraLATA toll service providers, while none of the small rural LECs in Oklahoma are toll providers. All of the Oklahoma small rural LECs are access providers and cannot be toll providers by Oklahoma Corporation Commission Order No. 339040, issued January 30, 1996. Any unique contractual provisions that Bell companies may have adopted with other interconnecting carriers for the provision of intraLATA interexchange services are not relevant or applicable to small LECs such as the Oklahoma Companies for which the terms of access are fully set forth in intrastate and interstate access tariffs.

⁶ As the service provider for the interexchange toll call, it is the IXC, not the LEC, that is
(continued...)

tariffs and charges the end user for the interexchange toll service;⁷ (8) the IXC transports the call to the network serving the terminating end user; (9) the IXC obtains terminating access service from the terminating carrier; and (10) the IXC pays terminating access charges to the terminating carrier. In its original local interconnection decision, the Commission confirmed this longstanding framework for exchange access:

[a]ccess charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service.⁸

Accordingly, the Commission should end any purported basis for confusion and affirm that the exchange access framework is applicable irrespective of the technology utilized (wireline or wireless) by the carrier terminating a call carried by an IXC.

⁶(...continued)

the end user's originating carrier. The LEC's sole role in such calls is to provide originating access services to the originating IXC. As such, the interexchange carrier is responsible for the call, its completion to the terminating point, and the compensation to other carriers with respect to any transport and switching of the call.

⁷ While the LEC may act as the billing agent on behalf of the IXC, the provision of billing service does not alter the nature of the call and its associated connecting carrier relationships.

⁸ *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd. 15499, 16013, (para. 1034)(1996)(*"First Report and Order"*). The Commission went on to state that "the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic." *Id.* Even where the carrier is both a LEC and the IXC, there are still three distinct entities collaborating for the call: (1) the originating LEC in its provision of access, (2) the LEC's interexchange operation or separate IXC affiliate, and (3) the terminating LEC. In this case, the LEC's IXC affiliate is responsible for the payment of access charges to the terminating LEC.

II. THE COMMISSION SHOULD REMIND THE INDUSTRY THAT IT HAS ALREADY CONCLUDED THAT THE ESTABLISHED ACCESS FRAMEWORK APPLIES WHEN A CMRS PROVIDER TERMINATES INTEREXCHANGE CARRIER TRAFFIC.

Sprint PCS, in its Petition, provides the Commission with several citations which establish that the Commission intends for this framework to apply with respect to the termination of IXC traffic on the networks of CMRS licensees. The Commission's rules and decisions in recent years clearly anticipate that interexchange traffic will be completed to the networks of CMRS licensees by IXCs. The Commission decided that the Section 251(b)(5) reciprocal compensation framework does not apply "when a long-distance call is passed from the LEC serving the caller to the IXC."⁹ Finally, in clarifying the intercarrier arrangements specifically with respect to a CMRS licensee, the Commission recognized that calls, including calls within a Major Trading Area ("MTA")(*i.e.*, intra-MTA), can and will be handed-off to IXCs and that the access charge framework applies for these calls:

Such [intra-MTA] traffic falls under our reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.¹⁰

Irrespective of any purported confusion by any carrier, there is no controversy regarding the compensation framework that applies when an interexchange carrier terminates traffic, regardless of whether it is terminated with a LEC or a CMRS licensee. As a result, however, of the apparently manufactured confusion regarding this matter, the Commission should confirm once again, as Sprint PCS has asked in its Petition, that the access framework applies to the

⁹ *First Report and Order*, 15499, 16013 (para. 1034).

¹⁰ *Memorandum Opinion and Order*, *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166, 11184 (2000)(*"TSR Order"*)(para. 31), *petition for recon. dismissed*, 16 FCC Rcd 11462, *aff'd sub. nom.*, *Qwest v. FCC*, 252 F. 3d 462 (D.C. Cir. 2001). The Commission also stated previously that landline-to-mobile traffic is subject to the access charge framework if "it is carried by an IXC." *First Report and Order*, 15499, 16016-17 (para. 1043).

termination by CMRS licensees of IXC traffic.

This clarification will resolve the otherwise unnecessary confusion which has been used by some entities to support their irrational positions. For example, some wireless carriers have suggested, contrary to any rational understanding of the responsibilities that arise when a call is handed-off by a LEC to an IXC, that the LEC providing originating access to the IXC should somehow be responsible for compensating the ultimate terminating CMRS licensee. This nonsensical suggestion neglects the facts that: (1) the IXC is the originating service provider; (2) the IXC has tariffed the service; and (3) the IXC has collected the interexchange toll service revenue for the call.¹¹

III. THE COMMISSION SHOULD APPLY THE SAME ACCESS CHARGE POLICIES TO CMRS LICENSEES AS ALREADY ESTABLISHED FOR NON-DOMINANT COMPETITIVE LECs FOR THE PROVISION OF INTERSTATE EXCHANGE ACCESS SERVICES.

The conclusion that the access charge framework applies when a CMRS licensee terminates interstate traffic from an IXC does not answer the question of how the CMRS licensee will establish the terms of payment from the IXC.¹² As Sprint PCS has noted, the Commission's rules do not allow CMRS licensees to file interstate access tariffs for interstate exchange access services.¹³ The Commission has recently addressed similar issues in establishing policies for the

¹¹ See Sprint PCS Petition at 8: "[A]s a direct result of the exchange access service provided [by Sprint PCS], AT&T is able to successfully complete calls made by its customers (and thereby receive customer revenue for successful call completion)."

¹² AT&T makes the claim that there is an industry practice in favor of a "bill-and-keep," no compensation approach. Involuntary arrangements and any approaches that have emerged with respect to these issues can hardly be considered practice, much less sound public policy and requirements. AT&T's "practice" is a self-serving claim.

¹³ 47 C.F.R. § 20.15. This provision does not prohibit CMRS licensees from filing intrastate tariffs that govern the terms for the provision of intrastate access services that CMRS licensees provide to IXCs for intrastate interexchange services.

filing of interstate access tariffs by competitive LECs (“CLECs”).¹⁴ In essence, the Commission established that CLECs may file interstate access charge tariffs if their rates are no higher than the “safe harbor” benchmark access rates established by the Commission. This approach may be readily and easily adaptable for use with CMRS licensees.

The failure to establish a procedure that enables a CMRS licensee to charge for the terminating access it provides to IXCs would deny the CMRS licensee the protections that have been afforded wireline access providers. From the perspective of the Oklahoma Companies, Commission action is required to ensure that CMRS licensees have a meaningful opportunity to collect charges for interexchange service access in order to end the confusion and unreasonable and burdensome claims that have wrongfully been directed at the Oklahoma Companies and other small rural LECs.

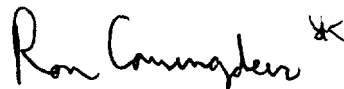
¹⁴ See *Seventh Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Access Charge Reform and Reform of Access Charges Imposed by Competitive Local Exchange Carriers, CC Docket No. 96-262, released by the Commission on April 27, 2001.

IV. CONCLUSION

Consistent with these Comments, the Commission should confirm a uniform application of the longstanding exchange access framework for the access services provided to IXC's, including the access provided by CMRS licensees. The Commission should resolve the access charge rate levels for CMRS licensees in a manner comparable to that applied to competitive LECs.

Respectfully submitted,

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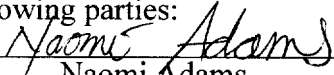
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CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Oklahoma Rural Telephone Companies" was served on this 30th day of November 2001, via hand delivery or by first class, U.S. mail, postage prepaid to the following parties:


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